IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.4137 OF 1993

Shri Pandurang Kaluram Naik,
presently residing at village
Khairnane Bonkode, Post:
K.U.Bazar, Belapur Road,
New Bombay. Petitioner.

Vs

1. City & Industrial Development
Corporation of Maharashtra Ltd
through its officer viz.
the Chief Land & Survey Officer..

2. The Special Land Acquisition
Officer, Metro Centre III,
Collectorate Building, 3rd floor,
Dist-Thane.

3. The State of Maharashtra, Respondents.

Mr Indrajeet Kulkarni, for the petitioner.
Mr R.M.Savant, for respondent no.1.
Mr V.S.Gokhale, AGP for respondent nos 2 and 3.

CORAM : B.H.MARLAPALLE & D.B.BHOSALE,JJ.
DATE : March 23, 2006.

ORAL JUDGMENT: (PER B.H.MARLAPALLE, J.)

1. In this petition filed under Article 226 of the Constitution, the petitioner prays for directions to respondent no.1-corporation to allot him a plot of land admeasuring 243 square meters at village Khairne Bonkode, Taluka & District-Thane, to declare that the land occupied by two chawls constructed by him on survey no.160/2 is not included in the land acquired by respondent no.1 and to direct respondent no.1 to adjust and retain the land occupied by the bungalow-type residential premises of the

petitioner, admeasuring 363 sq.meters in survey no.24 of village Khairne Bonkode against his entitlement for the land under the schemes announced by respondent no.1 and annexed to the petition at Exhibit-B.

2. Respondent no.1 is a company incorporated under the Companies Act, 1956 and is a Government company within the meaning of section 617 of the said Act as its share capital only and exclusively held by the Government of Maharashtra and its nominees. From 20.3.1971 respondent no.1 came to be appointed as the New Town Development Authority under section 113 (3A) of the Maharashtra Regional and Town Planning Act, 1966 for the new town development called New Bombay. The State Government acquired the privately held lands in or about 90 villages in Thane district for development and disposal under the provisions of section 118 of the Act. Respondent no.1, in exercise of its powers under section 159 of the Act, framed, with the previous approval of the State Government, the new Bombay Disposal of Lands Regulations, 1975. Respondent no.1 was entrusted to develop New Bombay on the "Nodel Pattern", i.e. the new township came to be divided into about twenty nodes with a gradual cusion of these nodes into a new township. Each node was so planned so as to be self-sufficient locality in the matter of social and physical infrastructure as well and 50% of its total expanse was to use for residential area and

remaining 50% was provided to develop physical and social infrastructural, such as roads, pavements, streets, lights, water works, drainage, sewerage, open spaces, play-grounds etc.

3. While acquiring lands from these 90 villages, the lands belonging to one Fakir Naik, from villages of Mahape, Adivali, Bhutavali, SAvli, Borivali, Pawane, Khairane, Kopar-Khairane situated at Belapur Patti, New Bombay, came to be acquired. Fakir had seven sons, viz. Maruti, Babu, Govind, Narayan , Ramchandra, Kaluram, Ganpat Ramakant. The petitioner is a son of Kaluram and he has one brother by name Atmaram, in addition to four sisters. After the lands were acquired, Fakir died and, therefore, respondent no.1, under a scheme framed by it viz. Gaothan Expansion Scheme to rehabilitate the residential houses or dwelling abodes which were erected by the land-holders prior to issue of the notification under section 4 of the Land Acquisition Act, 1894, addressed letters dated 8.5.1993 to the L.Rs of Fakir. The Government of Maharashtra also framed another scheme for allotment of 12.1/2% of the total acquired lands to all those land holders, whose lands were acquired after 6.2.1986 and in respect of which the compensation amount was not paid. Respondent no.1 informed the L.Rs of Fajkir vide a communication dated 8.5.1993 that an area of 3,160 sq.meters and 3800 sq.meters would be allotted to them

under these schemes on payment of rental compensation of Rs.70/- per sq.meter. The petitioner claims that his grievance is in respect of an offer made at 3160 sq.meters and not the one where the offer made is for 3800 sq.meters. He claims that he is entitled for 1/6th share from 3160 sq.meters, i.e. 526 sq.meters and from the other offer his share is claimed to be at 1/8th, which comes to 80 sq.meters, thus, making a total of 606 sq.meters. So far as survey no.24 is concerned, he claimed that the area occupied by the bungalow admeasuring 363 sq.meters, is required to be reduced on the ground that the said area is not covered by the acquisition. In addition, the petitioner states that on the plot in survey no.160/2 he has constructed two chawls covering an area of 576 sq.meters and the same cannot be included in the acquired land for respondent no.1.

4. Respondent no.1 has filed return and opposed the petition. In addition, during the course of argument it has been brought to our notice that by a communication dated 4.12.1990 the petitioner alone has been allotted an area of 1338 sq.meters under the scheme mentioned hereinabove on payment of a total rental compensation of Rs.1,27,670/- and while accepting the said offer the petitioner has submitted an undertaking that in case this petition is decided against him he will demolish both the chawls located on survey no.160/2 and hand over vacant

land to respondent no.1.

5. Mr.Kulkarni, learned counsel for the petitioner, has mainly relied upon the award passed by the Land Acquisition Officer on or about 5.5.1986 under section 11-C of the Land Acquisition Act,1894 and in the said Award the Land Acquisition Officer has noted that the land admeasuring five Gunthas from survey no.160/2 of Khairne village was excluded vide the Commissioner's Bombay Division order no.23501 dated 10.12.1973 as the land is under use of housing. He has also placed before us the copies of 7/12 extracts in respect of his contention that the land admeasuring five Gunthas from survey no.160/2 was excluded from acquisition and, therefore, he is entitled for the declarations as prayed for. He further claimed that the land occupied by the bungalow admeasuring 363 sq.meters was also not acquired and the same also required to be declared that it was not covered by the acquisition proceedings.

6. The affidavit-in-reply submitted by respondent no.1 states that the petitioner constructed the chawls after the notification under section 4 of the Land Acquisition Act, 1894 was published in the Government Gazette dated 4.2.1970 and thus the chawls were in addition to the structures like veternary hospital, post office etc. On 22.8.1977 the petitioner had applied to respondent no.1

for permission to construct a 20-rooms chawl and again on 26.7.1988 he made a statement before the Assistant Lands and Survey Officer that he was entitled under the Gaothan Expansion Scheme for deduction of the area occupied by the chawls on the ground that it was not acquired by respondent no.1.

7. After hearing the learned counsel for the respective parties, we have noticed that the petitioner has come out with this petition by way of an after thought and in any case he alone cannot exercise any right in respect of the land acquired by the State Government for respondent no.1 and from the ownership of his grand-father Fakir. There is nothing on record to show that the petitioner's individual right at any time determined before the land was acquired by the State Government. The offer made by respondent no.1 on the basis of the schemes framed by it as well as by the State Government is a joint offer to the L.Rs of Fakir and not the petitioner alone. However, during pendency of this petition it appears that there was a compromise between the petitioner and respondent no.1 for allotment of 1338 sq.meters and that too on the basis of the undertaking he furnished on 6.5.1999.

8. Section 11 of the Land Acquisition Act, which deals with the enquiry and award by the Collector, speaks of the true area of land and compensation payable for such true

area. We accept the contention of respondent no.1 that when the notification under section 4 of the Land Acquisition Act was issued by the State Government the chawls were not existing, and other structures like residential house, village panchayat office, post office and veternary hospital etc were existing.The Government sought to be acquired the entire land without disturbing these structures and the chawls on survey no.160/2 were constructed after the notification was issued and it was thus an illegal construction. As a matter of policy, respondent no.1 did not insist of demolition of the protected structures and taking over the lands occupied by them and more so it took a liberal attitude in allowing the dwellings to continue, but that does not mean that the area occupied by these dwellings was not covered by the acquisition. As the area was occupied by the dwellers, the compensation for that particular area of land was not awarded by the Land Acquisition officer and, therefore, the Award relied upon by Mr Kulkarni has to be vague and not to accept that the land was exempted from acquisition.

9. Having the parties arrived at a compromise , we do not desire to upset the same and same would be binding on both the parties, though the petition fails.

10. In the premises, the petition is dismissed. Rule discharged. The interim order, if any, stands vacated, with no order as to cost.

11. Mr Kulkarni, learned counsel for the petitioner, at this stage, made an oral application for stay to this order. The oral application is hereby rejected.

(D.B.BHOSALE, J.) **(B.H.MARLAPALLE,J.)**

HIGH COURT
CIVILI APPELLATE SIDE

WRIT PETITION NO.4137 OF 1993

Date of Judgment:

23rd March, 2006

For approval and signature

THE HON'BLE MR.JUSTICE B.H.MARLAPALLE.

THE HON'BLE MR.JUSTICE D.B.BHOSALE.

1. Whether Reporters of Local Papers may be allowed to see the judgment?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the Judgment?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any Order made thereunder?

5. Whether it is to be circulated to the Civil Judges?

6. Whether the case involves an important question of law and whether a copy of the judgment should be sent to Nagpur Aurangabad or Goa offices?